IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.661 of 2007

Date of Decision: November 12, 2007

Ashraf Ali Khan s/o Rashid Khan .....Petitioner

Versus

Shamim d/o Ashraf Ali Khan .....Respondent

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.B.S.Bhasaur, Advocate for the petitioner.

Mr.Jasbir Rattan, Advocate for the respondent.

S. D. ANAND, J.

1. A suit filed by the plaintiff-respondent was decreed in toto by the learned Trial Court, vide judgment and decree dated 1.12.2006. In appeal, the learned First Appellate Court admitted the appeal to a hearing and, while disposing of stay plea, directed the operation of the impugned decree to be stayed subject to the appellant's depositing 25% of the decretal amount, as well as furnishing security of the remaining amount, within one month, to the satisfaction of lower Court, undertaking to comply with the orders that may ultimately be passed.

2. While issuing notice of motion, Hon'ble S.N.Aggarwal, J. ordered on 6.2.2007 that:

> "If Rs.10,000/- is deposited in the learned Executing Court within one month from today, then the operation of the

impugned order shall remain stayed. This amount shall be payable to the respondent."

3. It is common ground today that the order aforementioned passed by Hon'ble S.N.Aggarwal, J. stands complied with.

4. The first appeal has not yet been disposed of by the learned First Appellate Court.

5. Learned counsel for the petitioner argues that the judgment and decree passed by the learned Trial Court deserve invalidation as the suit itself was not maintainable.

6. As already noticed, the first appeal against the judgment and decree passed by the learned Trial Court is pending consideration before the learned First Appellate Court. This Court cannot, accordingly, go into the question of maintainability of the suit itself. It is for the learned First Appellate Court to adjudicate upon that controversy.

7. The petition shall stand dismissed accordingly. However, in the circumstances of the case, learned District Judge, Sangrur is directed to dispose of the appeal on merits within a period of two months with effect from the date on which the matter is listed before him.

(S. D. ANAND)
JUDGE

November 12, 2007
SRM

Note: Whether referred to reporter ? Yes/No